

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ROBERT EDWARD: [LAGROUE],

11 Plaintiff,

12 v.

13 STATE OF WASHINGTON *et al.*,

14 Defendants.

CASE NO. C19-1800-JCC

ORDER

15 This matter comes before the Court on Defendant King County Department of Public
16 Defense's ("DPD") motion to dismiss (Dkt. No. 10), Defendant State of Washington's motion to
17 dismiss (Dkt. No. 12), Defendants Office of the Prosecuting Attorney and King County Superior
18 Court's motion for extension of time (Dkt. No. 21), and Plaintiff's two motions for default (Dkt.
19 Nos. 14 and 25). Having thoroughly considered the parties' briefing and the relevant record, the
20 Court finds oral argument unnecessary and hereby GRANTS Defendants' motions to dismiss and
21 DENIES Plaintiff's motions for default for the reasons explained herein.

22 **I. BACKGROUND**

23 On November 6, 2019, Plaintiff filed his complaint, naming four defendants: the State of
24 Washington, the King County Superior Court, the Office of the Prosecuting Attorney, and the
25 King County Public Defenders Office. (Dkt. No. 1 at 1–2.) Plaintiff's claims arise from events
26 during his criminal prosecution and conviction 26 years ago. (*Id.* at 3.) Plaintiff alleges that after

1 he dismissed his representative, Defendant King County Superior Court refused to allow Plaintiff
2 to proceed in his trial without an attorney. (*Id.*) Instead, the court appointed a public defender to
3 represent him, against his wishes. (*Id.*) Plaintiff brings claims for violations of his constitutional
4 rights, including his rights to due process of law, equal protection, and deprivations of the
5 privilege and immunities clause of the Fourteenth Amendment. (*Id.* at 3–4.) Plaintiff seeks \$27
6 million dollars in relief. (*Id.* at 4.)

7 **II. DISCUSSION**

8 **A. Plaintiff's Motions for Default**

9 Entry of default is appropriate where a party has “failed to plead or otherwise defend” a
10 suit. Fed. R. Civ. P. 55(a). “The court may set aside an entry of default for good cause.” Fed. R.
11 Civ. P. 55(c). On January 9, 2020, Plaintiff filed a request for entry of default against all
12 Defendants. (Dkt. No. 14.)¹ On January 29, 2020, Plaintiff filed a second motion for default
13 against all Defendants. (Dkt. No. 25.) But Defendants have appeared and defended this suit.

14 On December 23, 2019, Defendant DPD filed a motion to dismiss. (Dkt. No. 10.) On
15 December 30, 2019, Defendant State of Washington filed a motion to dismiss. (Dkt. No. 12.).
16 Thus, Defendants DPD and State of Washington have defended against this suit, and entry of
17 default against them is not appropriate. *See* Fed. R. Civ. P. 55(a).

18 On January 27, 2020, counsel filed a notice of appearance on behalf of Defendants Office
19 of the Prosecuting Attorney and King County Superior Court. (Dkt. No. 20.) On January 28,
20 2020, Defendants Office of the Prosecuting Attorney and King County Superior Court filed a
21 motion to dismiss and requested an extension of time to respond to the first request for default,
22 declaring that their delay in response is excusable neglect. (Dkt. Nos. 21, 23, 24.) These two
23 Defendants also filed a response in opposition to Plaintiff’s motion for default. (Dkt. No. 26.)

24 ¹ The Court takes note that Plaintiff states that he has not received any form of pleading
25 or defense. (*Id.*) Defendant State of Washington provided notice of Plaintiff’s refusal to accept
26 service by mail. (Dkt. No. 16.) The Court reminds Plaintiff that the Local Rules require him to
maintain with the Court an accurate mailing address. *See* W.D. Wash. Local Civ. R. 10(f).

1 The Court has reviewed counsel's declaration (Dkt. No. 22), finds that the delay in response is
2 excusable neglect, and accordingly GRANTS the motion for an extension of time to respond to
3 the first request for default (Dkt. No. 21.) Thus, because Defendants Office of the Prosecuting
4 Attorney and King County Superior Court have defended against this suit, entry of default is not
5 appropriate. *See* Fed. R. Civ. P. 55.

6 Therefore, Plaintiff's motions for default (Dkt. Nos. 14, 25) are DENIED.

7 **B. Defendants DPD's and State of Washington's Motions to Dismiss**

8 A defendant may move for dismissal when a plaintiff "fails to state a claim upon which
9 relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must
10 contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its
11 face. *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). A claim has facial plausibility when the
12 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
13 defendant is liable for the misconduct alleged. *Id.* at 678. A court may grant dismissal based on
14 the statute of limitations "only if the assertions of the complaint, read with the required liberality,
15 would not permit the plaintiff to prove that the statute was tolled." *Two Rivers v. Lewis*, 174 F.3d
16 987, 991 (9th Cir. 1999) (citation and quotation marks omitted). A dismissal under Federal Rule
17 of Civil Procedure 12(b)(6) "can [also] be based on the lack of a cognizable legal theory."
18 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). Because Plaintiff has
19 proceeded *pro se*, he "must be held to less stringent standards than formal pleadings drafted by
20 lawyers." *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

21 Defendants DPD² and State of Washington move to dismiss on the ground that Plaintiff
22 fails to state a claim upon which relief can be granted.³ (Dkt. Nos. 10, 12.) Plaintiff claims that

23 ² Defendant DPD states that "[i]nasmuch as the named entity, Public Defender's Office,
24 can be construed as the King County Department of Public Defense, DPD moves to dismiss this
matter. (Dkt. No. 10 at 2.)

25 ³ Defendant DPD also moves to dismiss pursuant to Federal Rules of Civil Procedure
26 12(b)(2), (4), and (5) on the ground that the Court lacks personal jurisdiction because of
insufficient process and failure to perfect service. (Dkt. No. 10 at 2–3.) Defendant State of

1 Defendants have deprived him of his constitutional rights. (Dkt. No. 1 at 3–4.) Federal courts
2 apply the forum state’s statute of limitations governing personal injury actions to claims brought
3 under § 1983. See *Wilson v. Garcia*, 471 U.S. 261, 279–80 (1985). Thus, the applicable
4 limitations period for Plaintiff’s claims is three years. Wash. Rev. Code § 4.16.080(2). Although
5 state law provides the applicable limitations period, federal law determines when the cause of
6 action accrues. *See Two Rivers*, 174 F.3d at 991. And “[u]nder federal law, a claim accrues when
7 the plaintiff knows or has reason to know of the injury which is the basis of the action.” *Id.* at
8 991.

9 Plaintiff’s claims arise out of King County Superior Court’s appointment of a public
10 defender and refusal to allow Plaintiff to proceed *pro se*. (See Dkt. No. 1 at 3–4.) These events
11 occurred over 26 years ago. (*Id.*) Thus, it is clear that these claims are well beyond the three-year
12 statute of limitations period. *See Wash. Rev. Code. § 4.16.080(2)*. And Plaintiff has not
13 responded to the motions to dismiss. Therefore, DPD’s and State of Washington’s motions to
14 dismiss are GRANTED and Plaintiff’s claims against these Defendants are DISMISSED.

15 The Court finds that these claims should be dismissed with prejudice. “Dismissal without
16 leave to amend is improper unless it is clear . . . that the complaint could not be saved by any
17 amendment.” *Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc.*, 368 F.3d 1053, 1061 (9th
18 Cir. 2004). Under these facts, this complaint cannot be saved because the claims are time-
19 barred.

20 **III. CONCLUSION**

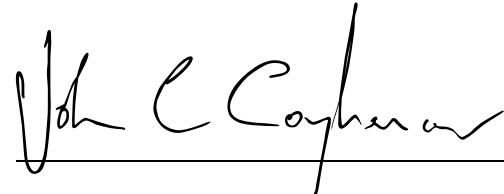
21 For the foregoing reasons, Defendants Office of the Prosecuting Attorney and King
22 County Superior Court’s motion for extension of time (Dkt. No. 21) is GRANTED. Plaintiff’s
23 motions for default (Dkt. Nos. 14, 25) are DENIED. Defendants DPD’s and State of

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25 Washington also moves to dismiss on the grounds of Eleventh Amendment immunity. (Dkt. No.
26 12 at 3–4.) Because dismissal is proper because Plaintiff’s claims are time-barred, the Court does
not reach these arguments.

1 Washington's motions to dismiss (Dkt. Nos. 10, 12) are GRANTED and Plaintiff's claims
2 against these Defendants are DISMISSED with prejudice.

3 DATED this 18th day of February 2020.

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John C. Coughenour

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UNITED STATES DISTRICT JUDGE